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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,626	01/15/2004	James R. Robellard	287.00070101	6109

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EXAMINER
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CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3781

MAIL DATE	DELIVERY MODE
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07/31/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/758,626	ROBELLARD ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	/Stephen J. Castellano/	3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 June 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7, 10, 12-22, 26, 27, 29, 30, 32, 33, 36-38 and 40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10, 12-22, 26, 27, 29, 30, 32, 33, 36-38 and 40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 30, 32, 38 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Hanssen.

Hanssen discloses a paint roller, frame and shield. When the shield is placed in a position to paint a ceiling, the shield defines an open top container body made of one-piece as the elongated handle can be removed. The container body has a sloped floor of arcuate shape and a pair of opposing sidewalls, the sloped floor and sidewalls define an elongated reservoir for holding liquid (paint). The roller includes an elongated cylinder having two circular end portions which attach the cylinder to the opposed sidewalls, the inside surface of the elongated cylinder has a first roller surface (a small longitudinal strip of the inside surface of cylinder) pivotally coupled to the container body in a first position (the position where the first surface lies closest to bolt 18), located within the reservoir at a level above the volume of liquid (which liquid is comparatively shallow in depth) and below the open top, and is further positioned about 70 degrees to about 110 degrees from vertical (the strip covers an arc of less than 40 degrees of the 360 degree inner circumference).

Re claim 38, the first roller surface faces upward and the roller defines an access zone (another roller surface the extends outwardly and upwardly from the container body) that allows accessing liquid by a roller type applicator.

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Re claim 40, the strip covers an arc of less than 20 degrees of the 360 degree inner circumference.

Claims 30, 32 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Dumesnil, Jr. (Dumesnil).

Dumesnil discloses a one-piece container body (paint tray) defining an open top reservoir for holding a designated volume of liquid and a first roller surface (part of the outer surface of the transfer roller positioned to face downwardly towards a surface of paint in the reservoir) pivotally coupled to the container body, the first roller surface is located within the reservoir at a level above the volume of liquid and below the open top and is further positioned about 70 to 110 degrees from the vertical (the portion of the outer surface is less than 40 degrees of the 360 degree inner circumference).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 10, 12-19, 26, 27, 29, 33 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumesnil in view of Bedrossian.

Dumesnil discloses the invention except for the lid. Bedrossian teaches a lid to cover a paint receptacle. It would have been obvious to cover the paint receptacle to keep contaminants from soiling paint in the tray or to preserve the freshness of the paint by keeping it from drying out.

Re claims 16-18, Bedrossian further teaches a handle. It would have been obvious to add a handle for easy carrying by a convenient and comfortable grip. Official notice is taken that protrusions on the container body for reinforcing and attaching a bail handle are well known. It would have been obvious to add the protrusions to reinforce the body at the area of bail handle attachment to prevent a rip or prevent excessive wear from occurring at the handle attachment site.

Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumesnil in view of Bedrossian as applied to claim 1 above, and further in view of Drum.

The Dumesnil-Bedrossian combination discloses the invention except for the perforated surface. Drum teaches a perforated surface. It would have been obvious to modify the Bedrossian surface to be perforated to allow excess paint to fall through the surface to allow quicker discharge of excess paint.

Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumesnil in view of Bedrossian as applied to claim 1 above, and further in view of Carling et al. (Carling).

The Dumesnil-Bedrossian combination discloses the invention except for the X shaped support structure where a first rib approaches a second rib proximate the center of the body. Carling teaches the X shaped support structure supporting a generally planar surface as shown in Fig. 3. It would have been obvious to use the X shaped pattern for the first roller surface to provide reinforcement.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection

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is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-7, 10, 12-22, 26, 27, 29, 30, 32, 33, 36-38 and 40 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the claims (the drawings) of U.S. Patent No. D524501 to Prokop et al. (Prokop) in view of Bedrossian. Prokop discloses the invention except for the lid. Bedrossian teaches a lid to cover a paint receptacle. It would have been obvious to cover the paint receptacle to keep contaminants from soiling paint in the tray or to preserve the freshness of the paint by keeping it from drying out.

Claims 1-7, 10, 12-22, 26, 27, 29, 30, 32, 33, 36-38 and 40 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the claims (the drawings) of U.S. Patent No. D524003 to Prokop et al. (Prokop) in view of Bedrossian. Prokop discloses the invention except for the lid. Bedrossian teaches a lid to cover a paint receptacle. It would have been obvious to cover the paint receptacle to keep contaminants from soiling paint in the tray or to preserve the freshness of the paint by keeping it from drying out.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Stephen J. Castellano/ whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony D. Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen J. Castellano/  
Primary Examiner  
Art Unit 3781

sjc